UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BRITTANY AMBRIDGE, Plaintiff, v. DOMINO MEDIA GROUP, INC. and CLIFF SIRLIN, Defendants.	Case No. 15-cv-9944 **COMPLAINT** (Demand for Trial by Jury) (Electronically Filed)

Brittany Ambridge, by her attorneys Pedowitz & Meister, LLP, alleges as follows for her Complaint against Defendants:

NATURE OF ACTION

1. This action arises from Defendants Domino Media Group, Inc. and Cliff Sirlin (hereinafter "Defendants") failure to pay overtime wages to Plaintiff in violation of the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. ("FLSA") and New York Labor Law ("NYLL") § 190 et seq.

2. Further, Defendants retaliated against Plaintiff in violation of Federal and State law by, *inter alia*, terminating her employment because she reasonably and in good faith complained that Defendants' failure to pay overtime violated the law and by unlawfully interfering with Plaintiff's ability to find future business

opportunities after her termination. *See* 29 U.S.C. § 215 and NYLL § 215.

3. Plaintiff seeks compensatory damages, liquidated damages, back pay, front pay, benefits, attorneys' fees, interest and other appropriate relief pursuant to the FLSA and NYLL.

JURISDICTION AND VENUE

4. This Court has jurisdiction pursuant to 28 U.S.C. §1331, in that this is an action arising under the FLSA, as amended, 29 U.S.C. Section 201, et. seq. This Court has supplemental jurisdiction of the claims arising under New York State law pursuant to 28 U.S.C. §1367(a), in that the New York State law claims are so related to Plaintiff's FLSA claim as to form the same case or controversy under Article III of the United States Constitution.

5. As the unlawful conduct complained of herein occurred, and Defendants regularly do business, within the Southern District of New York, venue is proper in this District pursuant to 28 U.S.C. Secs. 1391(b).

PARTIES

6. Plaintiff, Brittany Ambridge ("Plaintiff" or "Ambridge") is, and at all material times was, a citizen of the State of New York.

7. Defendant, Domino Media Group, Inc. ("Domino Media") is, and at all material times was, a Delaware corporation authorized to transact business in New York and maintaining its principal place of business in New York City.

8. Defendant, Cliff Sirlin, ("Sirlin") is and at all material times was an officer and employee of Domino Media. On information and belief Sirlin is one of the co-founders of Domino Media which is the publisher of domino magazine and domino.com.

9. Defendant Sirlin at all material times had direct control over Domino Media's operations.

10. Sirlin's actions and decisions directly affected the terms and conditions of Plaintiff's employment. For example, Sirlin, *inter alia*, made the decision to hire and fire Plaintiff, supervised her daily activities, and set her compensation.

11. Both Domino Media and Sirlin (collectively "Defendants") were at all relevant times "covered employers" under the FLSA as they are engaged in activities related to commerce for a common business purpose and have a gross volume of business not less than $500,000 per year.

12. Defendants were, at all relevant times, an "employer" of the Plaintiff as defined in 29 U.S.C. §203(d) and New York Labor Law § 190(3), and Plaintiff was an "employee" of Defendants as defined in 29 U.S.C. §203(e)(1) and New York Labor Law § 190(3).

13. Defendants are covered employers under NYLL § 651, as Defendants are an organized group acting as an employer.

14. Defendants are joint employers pursuant to the FLSA and NYLL and are therefore jointly and severally liable.

FACTUAL ALLEGATIONS

15. Since in or about 2013, Domino Media has been the publisher of the quarterly design magazine entitled "domino."

16. In May 2013, Ambridge was hired by Defendants to the position of Photo Editor at a salary of $70,000 per year.

17. As Photo Editor Ambridge was assigned to keep track of, and organize, all photographic material, and to retouch images for publication in, domino.

18. In June 2013, Ambridge was told by Sirlin that in addition to her Photo Editor responsibilities, from then on she would also be responsible for photographing the editorial content for domino.

19. Throughout her employment, Ambridge performed predominantly manual work, including taking and retouching photographs, maintaining and testing equipment, and adjusting lighting.

20. Ambridge was also required to ensure that all photographs adhered to domino's editing and retouching protocol.

21. Ambridge was the sole photographer, editor, and retoucher for

domino, and therefore she worked extremely long hours.

22. From her first week as Defendants' employee, Ambridge worked more than 40 hours each week. At no time did Defendants pay overtime wages to Ambridge.

23. Despite the additional responsibilities she was given in June 2013, Ambridge did not receive any increase in pay nor was she ever paid overtime wages for any hours that she worked over 40 in a given week. For example, in August 2013, in order to finish the first issue of domino, Ambridge worked approximately 18-20 hours each day or approximately 133 hours each week.

24. Ambridge worked similarly rigorous schedules in the weeks leading up to each subsequent domino publication deadline including those in October 2013, December 2013, January 2014, April 2014, June and July 2014, October 2014, January 2015, and April 2015.

25. In July 2014, Ambridge worked approximately 120-140 hours a week to finish her work on the fourth issue of domino.

26. During the final week of production in July 2014, Ambridge's work was so intense, and the volume of work so high, that Ambridge could not leave the office for five (5) consecutive days other than to attend a meeting at Conde Nast and for a quick shower and change of clothes beforehand.

27. In those five (5) days, Ambridge slept for just seven (7) hours on a

borrowed mattress in a back room.

28. In weeks that were not directly leading up to a publication deadline, Ambridge still worked more than 40 hours.

29. Ambridge only had approximately nine (9) weekends off; and she worked the major holidays except for Easter, Thanksgiving, Christmas, and New Year's Day; in 2014.

30. Ambridge also traveled in connection with her work for Defendants. Defendants did not pay Ambridge additional compensation for the extra hours that she worked due to work related travel.

31. On several occasions, such as in January 2014, Ambridge complained to Sirlin and Domino Media that she was working too many hours and was not being paid enough money to do so.

32. Ambridge asked Sirlin for some relief from the long hours, or for a pay increase, but was told by Sirlin that one would not be given until her one year mark in May 2014.

33. During her employment, Ambridge's long hours caused her to suffer physical pain and emotional anguish. The physical symptoms included shooting pain and numbness in her right arm and shoulder, swelling of her feet and legs, and lower back pain.

34. In April 2014, Ambridge informed Sirlin that her long hours were

causing her physical pain, that she was "drowning" with work, and that she "desperately" needed some assistance.

35. Defendants did nothing to help her and Ambridge continued to work long hours without being properly compensated.

36. In August 2014, Ambridge again asked Sirlin for an increase in pay and an assistant. Neither was provided.

37. In October 2014, Ambridge expressed to Sirlin that she was not comfortable working so many hours without any promise of additional compensation.

38. In response, Sirlin threatened Ambridge, and said that if she could not fulfill her responsibilities then she needed to tell that to Robert Leleux, the Creative Director of domino, immediately; ostensibly so she could be replaced.

39. Fearful of losing her job, Ambridge resumed to her duties and finished her work on the pending issue of domino.

40. In December 2014, Sirlin gave Ambridge a raise, but still refused to pay her overtime for any hours that Ambridge worked over 40 in a given week.

41. On April 27, 2015, Ambridge told Creative Director Robert Leleux that she really needed to take the day off because she had worked every day for over two (2) months, her uncle had died and she needed to stop and grieve.

42. Leleux told Ambridge that Sirlin didn't care and she had to come to

work.

43. Ambridge then responded to Sirlin directly. She explained to him about her uncle's death, the excessive work schedule she had performed, complained that she had worked hundreds of hours of unpaid overtime, and said that she needed to take a day off.

44. Ambridge also told Sirlin that she had worked evenings, weekends, and most major holidays and that over the past 2 years, she had worked over two hundred ("200") all-nighters.

45. In response, later that evening Ambridge received an email from Sirlin stating that her position was being eliminated effective immediately and that her health insurance would be terminated at the end of that month - three (3) days later.

46. An email was simultaneously sent by Domino Media to the entire team stating that Ambridge's position was eliminated and that it was for the betterment of the company.

47. After her termination, Sirlin told members of the domino staff that Ambridge needed to sign the severance agreement Domino Media presented to her or he was "going to sue her and ruin her career."

FIRST CLAIM
(Failure to pay overtime under the Fair Labor Standards Act)

48. Ambridge repeats paragraphs 1 through 47, inclusive, of this Complaint.

49. Defendants willfully, knowingly and intentionally did not pay Ambridge at her overtime rate for all of the hours that she worked in excess of 40 hours a week.

50. Upon information and belief, Defendants knew of, and/or showed reckless disregard for, the practices by which Ambridge was not paid at the proper overtime rate for all of the hours that she worked in excess of 40 hours a week.

51. Defendants' failure to pay Ambridge overtime was a willful violation of the FLSA, 29 U.S.C. §207.

52. Pursuant to the FLSA, Ambridge is owed payment of unpaid wages at the proper overtime rate of pay for all overtime they worked plus an additional amount equal thereto in FLSA liquidated damages, attorney's fees and the costs and disbursements of this action.

SECOND CLAIM
(Failure to pay overtime under New York Labor Law and Violation of the Wage Theft Prevention Act)

53. Ambridge repeats paragraphs 1 through 52, inclusive, of this Complaint.

54. Defendants did not provide Ambridge with a written notice of her wages as required by the New York State Wage Theft Prevention Act, NYLL §195.

55. Defendants' failure to provide Plaintiff with a written notice of her wages was a violation of the New York State Wage Theft Prevention Act, N.Y. Labor L. §195.

56. Defendants' failure to pay Ambridge overtime at the proper rate was a willful violation New York Labor Law §§ 160(3) and 198, and N.Y.C.R.R. §142-2.2.

57. Pursuant to New York Labor Law §§ 160(3), 191, 195, and 198, and N.Y.C.R.R. §142-2.2, Plaintiff is entitled to recovery of unpaid overtime at the proper rate for hours worked in excess of 40 hours a week, an additional amount equal to 100% thereof in liquidated damages pursuant to New York Labor Law § 198, the penalties for the failure to provide Plaintiff with a wage statement, prejudgment interest, attorney's fees and costs and disbursements of this action.

THIRD CLAIM
(Unlawful retaliation under Fair Labor Standards Act and New York Labor Law)

58. Ambridge repeats paragraphs 1 through 57, inclusive, of this Complaint.

59. Ambridge engaged in protected activity as she made a good faith complaints to Defendants that she should be paid overtime and on April 27th, that she additionally needed to take a day off as, *inter alia*, she had worked hundreds of hours of unpaid overtime, her uncle had died, and she needed time to grieve.

60. Defendants retaliated against Ambridge by requiring her to work additional hours without pay, by failing to provide her with any relief from the affects the excessive demands had placed on her, by terminating Ambridge's employment when she ultimately insisted on taking time off because of her manifest physical and emotional need for same, and then for threatening that it would punish her if she did not sign the severance agreement that it wanted.

61. Defendants have further retaliated against Plaintiff by obstructing her ability to find new employment by, *inter alia*, prohibiting Plaintiff from using images that she had taken and retouched to promote her work, threatening to sue Plaintiff for using any images that she created or retouched at domino, prohibiting Domino Media employees from talking to Plaintiff and interfering with Plaintiff's ability to find new employment after her termination from Defendants. Prior to her termination Plaintiff had been openly using the images with the knowledge of Domino Media.

62. The retaliatory conduct is in violation of 29 U.S.C. § 215(a)(3) and New York Labor L. § 215.

63. Pursuant to these provisions, Plaintiff is entitled to compensatory damages and other appropriate relief, including back pay, front pay, lost benefits, attorney's fees, costs and other disbursements, as may be determined by the Court. 29 U.S.C. § 215(a)(3) and New York Labor L. § 215.

WHEREFORE, Plaintiff demands Judgment in her favor and against Defendants for;

(a) compensatory damages in an amount of one and one half times her hourly rate of pay for all hours she worked overtime,

(b) an amount equal thereto as liquidated damages as provided in 29 U.S.C.A. § 216(B),

(c) an amount equal to the sum of section (a) above in liquidated damages as provided in New York Labor L. § 198, and 12 NYCRR 142-2.2,

(d) prejudgment interest on the New York Law amounts,

(e) attorneys' fees and costs and disbursements of this action,

(f) attorneys' fees and costs incurred in enforcing the Judgment as to the New York State claim pursuant to New York Labor Law § 198 paragraph 4,

(g) a fifteen (15%) percent increase in the amount of the Judgment as to the New York State claim if any amounts remain unpaid upon the expiration of ninety (90) days following the time to appeal the Judgment if no appeal is then pending pursuant to New York Labor Law §198 paragraph 4, and

(h) Compensatory damages including front pay, back pay, and lost benefits; and

(i) such other and further relief as this Court deems necessary and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury of all issues so triable in this action.

Dated: New York, New York
December 21, 2015

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